MILBANK, TWEED, HADLEY & McCLOY LLP

1 CHASE MANHATTAN PLAZA

NEW YORK, N.Y. 10005-1413

212-530-5000

FAX: 212-530-5219

LOS ANGELES
213-892-4000
FAX: 213-629-5063

WASHINGTON, D.C.
202-835-7500
FAX: 202-835-7586

LONDON
020-7615-3000
FAX: 020-7615-3100

FRANKFURT
49-69-71914-3400
FAX: 49-69-71914-3500

MUNICH
49-89-25559-3600
FAX: 49-89-25559-3700

BEIJING
8610-5123-5120
FAX: 8610-5123-5191

HONG KONG
852-2971-4888
FAX: 852-2840-0792

SINGAPORE
65-6428-2400
FAX: 65-6428-2500

TOKYO
813-3504-1050
FAX: 813-3595-2790

THOMAS A. ARENA
PARTNER
DIRECT DIAL NUMBER
212-530-5828
E-MAIL: tarena@milbank.com

MEMO ENDORSED

June 2, 2008

BY HAND

The Honorable Richard M. Berman
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street -- Room 650
New York, New York 10007

Re: Beane v. The Bank of New York Mellon et al.
Civ. No. 07-9444 (S.D.N.Y.)

Dear Judge Berman:

I am writing on behalf of counsel for all of the parties jointly to request a modification of the discovery schedule in the above-referenced matter. The current schedule calls for the parties to conclude fact discovery by July 31, 2008, and expert discovery by September 15, 2008. Thus far, the parties have been participating in fact discovery on all fronts, and have noticed numerous depositions to take place in the near future. This schedule, however was set before plaintiff filed an amended complaint on May 8, 2008.[1] Because the new allegations and claims in the amended complaint substantially broaden the factual issues in dispute, the parties are requesting a modification of the discovery schedule, as set forth below.

[1] Currently, the parties are the process of briefing motions to dismiss and for class certification with respect to the amended complaint. Those motions will be fully submitted on June 30, 2008.

Hon. Richard M. Berman
June 2, 2008

As Your Honor is aware, this action involves ERISA claims brought on behalf of a putative class of approximately 75 pension plans against The Bank of New York Mellon and BNY ConvergEx Execution Solutions Group LLC (collectively, the "BNY Defendants"), and Callan Associates, Inc. The amended complaint is predicated, in part, on new allegations that the BNY Defendants acted as fiduciaries to the pension plans in plaintiff's proposed class. Contemporaneously with the filing of the amended complaint, plaintiff served the BNY Defendants with supplemental discovery requests directed to these new allegations, which relate to securities transactions the BNY Defendants executed on behalf of each of the plans dating back to November 1998.

These new allegations will significantly affect the scope of discovery. The factual issue of whether the BNY Defendants acted as a fiduciary for these plans will turn, in part, on whether the BNY Defendants exercised discretionary authority or control over plan assets and whether they acted pursuant to specific instructions from investment managers in executing securities transactions on behalf of the plans. *See* 29 C.F.R. § 2510.3-21(d). Information relating to each securities transaction executed by the BNY Defendants will also be relevant to whether the BNY Defendants received reasonable compensation for the services they provided to the pension plans. This discovery will be a significant undertaking in both time and resources. Among other things, it will require the BNY Defendants to produce substantial amounts of data from off-line electronic storage devices containing trade information for each of the 75 plans in the proposed class over the eight-year class period.

It will be very difficult for the parties to complete the necessary discovery within the confines of the existing schedule. Moreover, depending on the outcome of the pending motions, it may prove to be unnecessary for the parties to engage in the voluminous and time-consuming discovery into the individual securities transactions executed on behalf of the plans.

Specifically, if the Court denies plaintiff's motion for class certification or grants defendants' motion to dismiss, both of which are in the process of being briefed, the parties will be able to avoid some, if not all, of this additional discovery.

In view of the foregoing, the parties jointly request that the Court modify the current discovery schedule to bifurcate fact discovery into two phases. In the proposed first phase, the parties would continue, as they have been doing, to engage in vigorous discovery relating to all issues of liability and damages, except those that would involve inquiry in the individual securities transactions executed on behalf of the plans in plaintiff's proposed class. Discovery into the plans' individual securities transactions would be deferred until the proposed second phase of discovery. Under the parties' proposal, the second phase of fact discovery would not begin until a decision on plaintiff's outstanding motion for class certification or defendants' motion to dismiss made such discovery necessary. The parties would be prepared to conduct any second phase of fact discovery as expeditiously as practicable.[2] The parties would also request that expert discovery be scheduled to conclude 45 days after the end of the second phase of fact discovery.

The parties are available to discuss this matter further with Your Honor, either in person or telephonically, as the Court desires. Thank you very much for your consideration of this request.

Respectfully submitted,

Thomas A. Arena

cc: Paul Blankenstein, Esq. (Counsel for Callan Associates, Inc.)
Gregory Porter, Esq. (Counsel for Albert T. Beane, Jr.)

---

[2] Alternatively, the parties request an extension of the discovery deadline for two months to afford the parties adequate time to address the issues raised in plaintiff's amended complaint.